

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-195-E

In the Matter of:)	
)	
Duke Energy Carolinas, LLC's and Duke)	REPLY OF DUKE ENERGY
Energy Progress, LLC's Joint Petition for)	CAROLINAS, LLC AND DUKE
Approval of Accounting Order to Defer)	ENERGY PROGRESS, LCC TO THE
Incremental COVID-19 Expenses to Be)	RETURN OF THE OFFICE OF
Included in Future Rate Proceedings)	REGULATORY STAFF
)	

Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively, the “Companies” or “Duke Energy”), pursuant to S.C. Code Ann. Reg. 103-829(A) submit this Reply to the Return of the Office of Regulatory Staff (“ORS Return”) filed October 16, 2020 as follows:

1. DEC and DEP do not object to the ORS request for additional time to review and comment on their Joint Petition for Approval of Accounting Order to Defer Incremental COVID-19 Expenses (“Petition” or “COVID Deferral Petition”). The Petition is on the Commission’s agenda for action at its meeting scheduled for October 21, 2020. The Companies do not object to the Petition being carried over for action at a later time. The ORS Return notes that a similar deferral request was filed by DEC and DEP with the North Carolina Utilities Commission and that comments in that proceeding are due by October 30, 2020. The Companies have no objection to a similar deadline for comments in this proceeding with action to be taken by the Commission following receipt of the comments.

2. DEC and DEP oppose the ORS request that notice of the filing be given. While S.C. Code Ann. §§58-27-860 and 58-27-870 require notice and hearing prior to implementation of new rates in most cases, they do not apply to the COVID Deferral Petition because it does not request the implementation of new rates. Instead the Petition requests the entry of an accounting order relating to certain COVID related costs; this would authorize certain accounting treatment but no rate changes are requested. Like all other deferral requests of which the Companies are aware, the prudence and reasonableness of the costs that would be deferred under the order they seek would be subject to audit and examination at the time that DEC or DEP files a rate case seeking recovery of such costs. The ORS, the Consumer Advocate and customers will be given notice of any such rate case filing and will have every opportunity to examine and oppose recovery of such costs in those proceedings.

An example of this Commission's consistent approach to deferral requests like the one sought in this proceeding is found in Order No. 2016-489 in Docket No. 2016-240-E in which DEC requested an accounting order permitting the deferral of costs related to the deployment of Advanced Metering Infrastructure. In approving the request that order states that:

[t]he Company's request is consistent with established case law, and because the request does not involve a change in rates or tariffs, neither notice to the public nor a public hearing is required. An accounting order granting the relief that the Company seeks will not preclude the Commission or parties from addressing the reasonableness of the costs deferred for AMI meters in the Company's next general rate proceeding.

Order No. 2016-489, pp. 4-5. The Companies request and expect that a similar provision will be a part of any order granting their COVID Deferral Petition.

3. The ORS Return argues that notice of the COVID Deferral Petition is required because of the position that the Companies have taken in their appeals of the Commission's rulings in Dockets 2018-318-E and 2018-319-E ("Rate Case Appeals"). That argument is a complete and

inexplicable mischaracterization of the argument actually made by the Companies in the Rate Case Appeals. In Docket Nos. 2018-318-E and 2018-319-E, DEP and DEC sought, among other relief, recovery in rates of amounts that had been deferred under a number of accounting orders issued by the Commission in the years prior to filing the rate cases.¹ The costs deferred in those various dockets were fully subject to audit and examination by the ORS in Docket Nos. 2018-318-E and 2018-319-E. At no time during the proceedings in Docket Nos. 2018-318-E or 2018-319-E did DEP or DEC take the position that “...the Commission, by granting an accounting order to establish a regulatory asset, guarantees the utility recovery of its underlying claimed expenses and a return on those expenses in the next general rate proceeding.” ORS Return, p. 2.

Instead, the dispute between the Companies and the ORS concerning recovery of deferrals relates, both in the rate case hearings and on appeal, to the narrow issue of whether the Companies have a legal right to recover a return on deferred amounts determined to have been prudently incurred and reasonable in amount. That dispute was summarized by DEP witness Laura Bateman:

In particular, I oppose the ORS recommendation that the Company be disallowed a return on the incremental costs which the Company has deferred in a regulatory asset on its books during the deferral period. I also oppose the disallowance proposed by the ORS which would deny the Company its carrying costs during the amortization period for the portion of the regulatory assets that the ORS has identified as related job operating expenses. If the Commission accepts these proposals, DEP will not be able to fully recover its prudently-incurred costs. The Company incurred these costs in the past, and both the ORS and the Company have proposed recovery of the costs in the future. There is a real cost of debt and a real cost of equity that the Company incurs in financing the costs between this period – during this period, between when the costs are incurred and when they are recovered. To disallow recovery of these costs would be to disallow prudently incurred costs, and no one suggests that these weren’t prudently incurred or that they were not, in fact, incurred.

Docket No. 2018-318-E, Transcript Vol. 3., pp. 315-316.

¹ The DEP regulatory assets for which recovery was sought related to Dockets 2001-139-E, 2013-472-E and 2018-205-E. The DEC regulatory assets for which recovery was sought related to Dockets 2016-196-E, 2018-205-E, 2018-206-E, 2018-207-E, 2016-240-E.

In the Rate Case Appeals, the Companies have made the same argument explained by Bateman. As stated in their Appellants' brief, "[t]he issue on appeal is whether the Duke Entities can recover a return on the full amount of those deferrals through the deferral and amortization periods." Appellants' Brief, p. 40. In pursuing the return issue on appeal, the Companies have argued that "[b]y disallowing the requested returns, the Commission has essentially required the Companies to make a zero-interest loan to the Companies' customers." Appellants' Brief, p. 17.

ORS argues in its Return that DEC and DEP have taken the position in their appeal that when the Commission granted the various accounting orders in the years prior to the two rate cases that it was "guaranteeing" recovery of the amounts deferred. If that were the case, surely the ORS Respondents' Brief would have responded to that argument by pointing out the language in every accounting order granted to the Companies to the effect that approval of the deferral does not foreclose any party from contesting the reasonableness and prudence of the costs subject to the deferral. But the ORS brief makes no such argument because DEC and DEP did not argue that the deferral orders guaranteed recovery. No such issue was raised on appeal and no such issue has been discussed in any appellate brief. Instead, as explained above, the issue on appeal is the Companies' legal right to recover a return on deferred costs once those costs were determined to be reasonable and prudent in the rate cases.

Conclusion.

The Companies have no objection to the establishment of an appropriate comment period before acting on the COVID Deferral Petition. However, the Companies ask that the ORS request for notice be rejected, and that this Petition be treated by the Commission like every other deferral request, with issues relating to prudence and reasonableness of deferred costs addressed at the time that the Companies seek recovery of such costs.

Respectfully submitted this 19th day of October, 2020.

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